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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/045,669	10/22/2001	Huy D. Phan	015916-288	2418
7590 11/16/2004 Henricks, Slavin & Holmes LLP 840 Apollo Street, Suite 200 El Segundo, CA 90245			EXAMINER VRETTAKOS, PETER J	
			ART UNIT 3739	PAPER NUMBER
DATE MAILED: 11/16/2004				

Please find below and/or attached an Office communication concerning this application or proceeding.

## Office Action Summary

Application No.

10/045,669

Applicant(s)

PHAN, HUY D.

Examiner

Peter J Vrettakos

Art Unit

3739

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

### Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

### Status

- 1) ☒ Responsive to communication(s) filed on 29 March 2004.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

### Disposition of Claims

- 4) ☒ Claim(s) 1-21,23-28 and 32-55 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☒ Claim(s) 1-14,17-19,21,24,26,27 and 33-43 is/are allowed.
- 6) ☒ Claim(s) 15,16,20,23,25 and 28 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

### Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

### Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some \* c) ☐ None of:
- ☐ Certified copies of the priority documents have been received.
  - ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  - ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

### Attachment(s)

- 1) ☒ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☒ Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)  
Paper No(s)/Mail Date 3,4,8/04.
- 4) ☐ Interview Summary (PTO-413)  
Paper No(s)/Mail Date. \_\_\_\_\_.
- 5) ☐ Notice of Informal Patent Application (PTO-152)
- 6) ☐ Other: \_\_\_\_\_.

### **DETAILED ACTION**

The instant action is non-final.

An RCE was filed on 3-29-04.

Claims 1-21, 23-28, and 32-55 are pending.

Claims 37-55 are new.

Independent claims are 1, 13, 15, 17, 18, 19, 21, 24, 26, 33, 34, 35, and 36. All are in condition for allowance except claim 15, which is rejected below. The allowed independent claims are merely formerly objected to dependent claims rewritten into independent format (see prior Office Action dated 12-23-03.)

In sum, claims 1-14, 17-19, 21, 24, 26-27, and 33-43 are allowed.

Claims 15-16, 20, 23, 25, and 28 are addressed below.

### ***Claim Rejections - 35 USC § 102***

The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

Claims 15-16, 20, 23, and 25 are rejected under 35 U.S.C. 102(b) as being anticipated by Milder et al. (5,281,213).

Art Unit: 3739

Re: claims 15, 16, and 25, Milder et al. (Milder) discloses a soft tissue coagulation device (10), comprising:

a relatively short shaft defining a proximal portion and a distal end and including an outer structure formed from material that is substantially electrically nonconductive (col. 5:16-27);

at least one energy transmission device / electrode (22, see figure 4) supported on the outer structure in spaced relation to the distal end of the shaft;

a fluid inlet lumen (16) defined by the outer structure such that a wall having a wall thickness extends from the fluid inlet lumen and to the at least one energy transmission device (depicted in figure 4), located such that a portion thereof is aligned with the at least one energy transmission device, and including inner and outer lumen surfaces defining a distance therebetween that is greater than the wall thickness; and

a fluid outlet lumen (14) defined by the outer structure and operably connected to the fluid inlet lumen;

wherein the outer structure is configured such that the fluid inlet lumen includes an inlet associated with the proximal portion of the shaft, the fluid outlet lumen defines an outlet associated with the proximal portion of the shaft, and all fluid entering the outer structure through the fluid inlet will exit the outer structure through the fluid outlet (also depicted in figure 4).

Re: claim 20, Midler discloses a steering means in patented claim 12.

Re: claim 23, Midler discloses a non-conductive tip member (see tip 12 in figure 4).

***Claim Rejections - 35 USC § 103***

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

Claim 28 is rejected under 35 U.S.C. 103(a) as being unpatentable over Milder.

Claim 28 is toward catheter dimensions. Assuming that the Applicant's claim dimensions are optimal, it would have been obvious to one of ordinary skill in the art to modify Milder after routine experimentation to include into the catheter design the Applicant's dimensions. The motivation would be to provide a superior catheter.

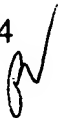
Any inquiry concerning this communication or earlier communications from the examiner should be directed to Peter J Vrettakos whose telephone number is 703 605 0215. The examiner can normally be reached on M-F 9-6.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Linda C Dvorak can be reached on 703 308 0994. The fax phone numbers for the organization where this application or proceeding is assigned are 703 746 7013 for regular communications and 703 746 7013 for After Final communications.

Art Unit: 3739

Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the receptionist whose telephone number is 703 308 0858.

Pete Vrettakos  
November 10, 2004



MICHAEL PEFFLEY  
PRIMARY EXAMINER